

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

76-5014

United States Court of Appeals FOR THE SECOND CIRCUIT

In the Matter of

ALRAC CORPORATION f.d.b.a.,
RADIATION RESEARCH CORPORATION
f.d.b.a., THE ALRAC COMPANY,

Debtor.

CARL E. BARNES,

Appellant,

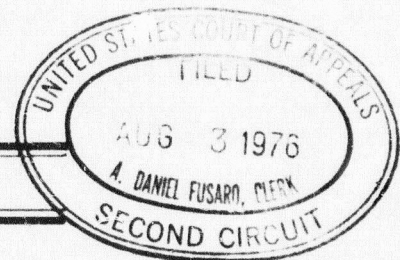
v.

ALRAC CORPORATION,

Debtor-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

SUPPLEMENTAL APPENDIX



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In the Matter of

ALRAC CORPORATION

DEBTOR

IN PROCEEDINGS FOR
AN ARRANGEMENT UNDER
CHAPTER XI OF THE
BANKRUPTCY ACT

NO. B-74-399

Harvey G. Wolfe, being duly sworn, deposes and says:

1. I am the Executive Vice President of Alrac Corporation, the above named debtor having been appointed by the Board of Directors in July, 1974 and make this affidavit in opposition to the motion of Carl E. Barnes and Sarah E. Barnes to dismiss the debtors petition under Chapter XI of the Bankruptcy Act, as amended, and for a stay. I have been a member of the Board of Directors of the debtor since 1970, and have acted since that time from time to time as counsel to the debtor, ^{and} its Treasurer.

2. In or about January, 1974 the debtor was in extreme financial difficulty. It had already incurred substantially the

Wolfe Affidavit

entire debt which is presently reflected in the schedules, and it was virtually without funds or credit. The staff was being laid-off, the landlord was threatening to evict the debtor from the premises and creditors were beginning to initiate legal proceedings. In short it appeared that Alrac Corporation was about to expire.

3. At that time Chevron evidenced an interest in the debtor. Chevron expressed a high degree of interest in obtaining rights to Alrac's patents and technology. After learning of Alrac's dire financial condition, it offered to make funds available to Alrac under a consulting-arrangement in order that the staff and facilities could be kept intact. This was in contemplation of formal agreements to be entered concerning patent rights, but in advance of the execution of any such documents, except a Consulting and Technical Assistance Agreement under which the funds were paid.

4. During this period and for several years prior thereto, Carl E. Barnes was President, Chairman of the Board of Directors and Chief Executive Officer of Alrac. Efforts had been made continually over the years to achieve a stable financial base for the continuity of Alrac as an operating business, but without notable success. These efforts were intensified in 1973, and, with the advent of Chevron, were redoubled in a search to uncover

alternatives. Although Chevron had offered funding as early as February, 1974 acceptance was delayed in order that alternatives could be explored, but none offered viable means for the survival of Alrac. In this period Dr. Barnes met the bare necessary expenses of the Company by arranging additional loans to it. Finally, after every possibility was exhausted the Consulting and Technical Assistance Agreement with Chevron was executed. The other agreements regarding Alrac's patent rights were executed on April 24, 1974, at which time Chevron had already paid Alrac \$75,000.

5. Under the terms of the Chevron Agreements, Alrac had the right but not the obligation to refuse to go to closing if it failed to obtain shareholders approval of the arrangement after using its diligent best efforts. The closing date was set for June 24, 1974. The preparation of proxy material for shareholders meeting was commenced immediately, but although a strenuous effort was made it became apparent that the June date could not be met. Extensions of the Closing Date were arranged with Chevron.

6. In mid-June, 1974, when it seemed that the proxy material would be in order and that a meeting date could be established, it was reported to me by Chevron personnel that Carl E. Barnes had spoken by telephone to the assistant of the Chairman of the Board of Standard Oil Company of California,

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informing him inter alia, that unless the arrangement were altered he would not vote his stock for it and would actively seek to defeat its approval by the stockholders. He was reported to have further stated that if he could not obtain the stockholders disapproval that he would find sufficient creditors to join him in filing an involuntary petition in bankruptcy against Alrac.

7. Substantially similar remarks were made by Carl E. Barnes at a meeting of Alrac's Board of Directors on June 20, 1974 at which I was present, and at which time he submitted his resignation as Chairman of the Board, Chief Executive Officer and Director of Alrac. Representatives of Chevron were present at that Board Meeting, at their request, as a result of the phone call referred to above.

8. Subsequently, after refusing to reconsider his resignations, the Board of Directors of Alrac terminated the employment of Carl E. Barnes as President of Alrac for cause.

9. Efforts were continued to hold a shareholders' meeting, although the proxy material had to be modified to reflect the new circumstances created by Mr. Barnes. The final drafts, in the form annexed to the moving affidavit as Exhibit B was approved by the S.E.C. in the latter part of July, 1974. The company had also been engaged in seeking a voluntary arrangement with all of its creditors, failure of the success of which would also be grounds

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to refuse to close the transaction with Chevron. Affirmative responses to the proposed arrangement fell off appreciably after June, 1974, and as of the end of July significantly less than the desired unanimity had been received.

10. By this time Chevron had made payments to Alrac of \$225,000 and had agreed to advance an additional \$50,000 as a loan to enable Alrac to meet the legal and printing expenses relating to the stockholders meeting. Chevron now would not agree to further extensions of the Closing date, and advised the Alrac management that it would provide no further funds. It was further expressed that Chevron would reserve its rights under the agreements but would offer no further cooperation or assistance to Alrac unless it had better assurance of obtaining the patent rights for which it had bargained. Alrac had still not received any viable alternative proposals from other sources. It had no cash. Unless the arrangement with Chevron could be revived it appeared that the company would be forced into straight bankruptcy. After further discussions it was determined that Chevron would continue in substance with the contemplated arrangement with its creditors under Chapter XI of the Bankruptcy Act. Seeing no alternative and the same being deemed to be in the best interests of its creditors and stockholders, Alrac's Board agreed to pursue that course.

Wolfe Affidavit

11. Immediate steps were taken to modify the transaction with Chevron to reflect the new circumstances, resulting in the agreements presently in force. However, an involuntary bankruptcy petition in straight / was filed against Alrac by Carl E. Barnes, Sarah E. Barnes, and Serico Electric Co., dated August 12, 1974. Alrac's petition in Chapter XI relief was filed shortly thereafter on August 20, 1974.

Present Status of Alrac

12. Alrac presently has no source of income other than funds received from Chevron under an Interim Consulting Agreement. The staff has been pared to what is believed to be the key personnel capable of developing the product potential available, and to train new employees as required.

13. The management of Alrac knows of no source of income presently or available in the immediate future other than from Chevron. Except for the Chevron arrangement there would be no basis to continue its business.

14. Under the Chevron arrangement Alrac will retain its foreign patent estate which offers proprietary protection throughout most of the free-world. This asset would be in serious jeopardy if the Chapter XI proceeding fails and the funds from Chevron were terminated because of inability to pay the various taxes and other maintenance costs required. An arrangement

sanctioned by this court in the Chapter XI proceeding has been made to maintain the foreign patents funded by Chevron.

15. The Chevron arrangement also provides for the payment to Alrac of a total of \$240,000 in the year subsequent to the Closing of the transaction and for the payment of \$450,000 in additional funds upon Closing with Chevron. These payments would provide the funds to enable the company to engage in the development of other products. The payments are contingent upon the success of the Chapter XI proceeding.

16. The arrangement submitted by the debtor is predicated upon the agreements with Chevron. The management of Alrac knows of no other source of funds upon which any plan could be formulated. Counsel for Dr. and Mrs. Barnes stated in open court on December 6, 1974 in essence that his clients presently had no other source of funding an arrangement.

17. The arrangement as submitted was formulated after long and arduous negotiations with the Creditors' Committee at all of which negotiations I was present. This committee was composed of representatives of every class of creditor of the debtor as well as Mrs. Barnes. Counsel for Dr. and Mrs. Barnes were also present at these negotiations. In particular, it is believed that among its members over 50% of the Subordinated

Wolfe Affidavit

Debentures are represented, and counsel for the Trustee under the indenture was also present and participating.

18. During the negotiations involving counsel for Dr. and Mrs. Barnes and prior to the filing of their present motion, an offer was submitted to the Company through its counsel by counsel for Dr. and Mrs. Barnes substantially to the effect that Dr. and Mrs. Barnes would abandon their opposition to the pending proceedings if the Company would

1. Name Dr. Barnes as a director.
2. Employ Dr. Barnes.
3. A plan of reorganization was approved by the Creditors' Committee and funded by Chevron.
4. A new board would elect officers.
5. Chevron and Alrac would save Dr. Barnes and his wife harmless from their liability to Hartford National Bank on account of their endorsement of a note and mortgage given by Alrac to the Bank.
6. Mutual releases would be exchanged.

s/ Harvey G. Wolfe
Harvey G. Wolfe

STATE OF CONNECTICUT)
: ss. New Haven, December 18, 1974
COUNTY OF NEW HAVEN)

Wolfe Affidavit

Personally appeared Harvey G. Wolfe, known to me to
be the person who executed the foregoing affidavit and made truth
to the foregoing, before me.

s/ Gerald W. Brownstein

Notary Public

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

-----x
In the Matter of

ALRAC CORPORATION f.d.b.a.
RADIATION RESEARCH CORPORATION
f.d.b.a. THE ALRAC COMPANY,

Bankruptcy No.
B-74-399

Debtor,

AFFIDAVIT OF
SERVICE BY MAIL

CARL E. BARNES,

Appellant,

v.

ALRAC CORPORATION,

Debtor-Appellee.
-----x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

COLLEEN A. COSTELLO, being duly sworn, deposes and
says:

I am not a party to the action, am over 18 years of
age and reside at 72 Mills Avenue, Staten Island, New York.

On August 2, 1976, I served a true copy of the annexed
Supplemental Appendix by mailing the same in a sealed envelope,
with postage prepaid thereon, in a post-office or official
depository of the United States Postal Service within the State
of New York, addressed to the last known address of the addressees
as indicated below:

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New Canaan, Connecticut 06840

Colleen A. Costello

COLLEEN A. COSTELLO

Sworn to before me this
3rd day of August, 1976.

Richard L. Schmeidler

Notary Public

RICHARD L. SCHMEIDLER
Notary Public, State of New York
No. 31-8826300
Qualified in New York County
Commission Expires March 30, 1979